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Jetcrete North America LP

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JETCRETE NORTH AMERICA LP,

Plaintiff,

vs.

AUSTIN TRUCK & EQUIPMENT, LTD.
DBA FREIGHTLINER OF AUSTIN; and
DOES I-X and ROE CORPORATIONS I-X,

Defendants.

Case No.

COMPLAINT

Plaintiff Jetcrete North America LP (“Jetcrete”) alleges as follows:

PARTIES

1. Jetcrete is a limited partnership formed under the laws of Nevada. Its only general partner, Jetcrete North America Holdings, Inc., is a Nevada corporation.

2. Upon information and belief, defendant Austin Truck & Equipment, Ltd. dba Freightliner of Austin (“Freightliner”) is a corporation formed under the laws of Texas with its principal place of business in Texas.

JURISDICTION AND VENUE

3. Complete diversity exists between the parties.

15. On June 26, 2018, Freightliner, through its agent Mr. Walpole, contacted Jetcrete to state it had not yet received the wired funds and would not release the trucks until it received the funds.

16. Because Jetcrete was under a strict timeline for obtaining the trucks, it wired an additional \$512,124.18 to Freightliner on June 28, 2018 so that the trucks could be delivered while the location of the first payment could be sorted out and returned to Jetcrete.

17. Freightliner has not returned the additional \$512,124.18 to Jetcrete, despite Jetcrete's demands that it do so.

BREACH OF CONTRACT

18. Jetcrete and Freightliner had a valid agreement whereby Jetcrete would pay Freightliner for the trucks, and Freightliner would deliver the trucks to Jetcrete.

19. Freightliner has materially breached the agreement by forcing Jetcrete to make double payments for the trucks, and not returning the additional payment to Jetcrete.

20. Jetcrete has performed all of its obligations under the parties' agreement.

21. As a direct and proximate result of Freightliner's material breach, Jetcrete has suffered damages.

22. Jetcrete has been forced to retain counsel to pursue this action and is entitled to reasonable attorneys' fees.

SECOND CAUSE OF ACTION

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

23. Jetcrete and Freightliner had a valid agreement whereby Jetcrete would pay Freightliner for the trucks, and Freightliner would deliver the trucks to Jetcrete.

24. Freightliner owed Jetcrete a duty of good faith under the parties' agreement

25. Freightliner breached that duty by performing in a manner that was unfaithful to the purpose of the parties' agreement when it forced Jetcrete to make double payments for the trucks and refused to return the additional payment to Jetcrete.

26. Jetcrete's justified expectations under the parties' agreement were denied.

27. As a direct and proximate result of Freightliner's breach, Jetcrete has suffered damages.

28. Jetcrete has been forced to retain counsel to pursue this action and is entitled to reasonable attorneys' fees.

THIRD CAUSE OF ACTION

CONVERSION

29. Freightliner committed an act of dominion over Jetcrete's funds that were wired twice to Freightliner by failing to return one of the wires to Jetcrete.

30. Freightliner's failure to return the funds to Jetcrete was in denial of and inconsistent with Jetcrete's right to those funds.

31. Freightliner's failure to return the funds to Jetcrete was in derogation, exclusion, or defiance of Jetcrete's right to those funds.

32. As a direct and proximate result of Freightliner's actions, Jetcrete has suffered damages.

1 33. Jetcrete has been forced to retain counsel to pursue this action and is
2 entitled to reasonable attorneys' fees.

3 **FOURTH CAUSE OF ACTION**

4 **FRAUDULENT OR INTENTIONAL MISREPRESENTATION**

5 34. Freightliner, through its agent Mr. Walpole, made a false representation to
6 Jetcrete when it claimed that it had not received the wire of \$512,124.18, despite its previous
7 representations, through its agent Mr. Walpole, that it had received that wire.

8 35. Freightliner's agent Mr. Walpole either knew the representation was false
9 or had an insufficient basis for making the representation.

10 36. By making this misrepresentation to Jetcrete, Freightliner intended to
11 induce Jetcrete to wire an additional \$512,124.18 to Freightliner so that the trucks could be
12 delivered.

13 37. Jetcrete justifiably relied upon Freightliner's misrepresentation and wired
14 the additional funds to Freightliner.

15 38. As a direct and proximate result of Freightliner's misrepresentation,
16 Jetcrete has suffered damages.

17 39. Jetcrete has been forced to retain counsel to pursue this action and is
18 entitled to reasonable attorneys' fees.

19 **FIFTH CAUSE OF ACTION**

20 **UNJUST ENRICHMENT**

21 40. Jetcrete has conferred upon Freightliner the benefit of two payments of
22 \$512,124.18 each for the delivery of three mixer trucks.

23 41. Freightliner has unjustly retained Jetcrete's wired funds, and it is
24 inequitable for Freightliner to retain all of those funds and not return one of the wires to Jetcrete.

5. For such other and further relief as the Court may deem just and proper.

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